

Governor Signs New Executive Orders Relative to COVID-19

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On November 2, 2020, Governor Baker signed three new COVID-19 executive orders (“Orders”) to further prevent the spread of COVID-19 in the Commonwealth, and the Department of Public Health (“DPH”) issued a new stay-at-home advisory. Of the Orders, the first requires early closing for certain businesses and activities; the second is a further restriction on gatherings; and the third is a revised face covering order. These Orders and the DPH stay-at-home advisory are currently in effect.

The Orders empower local boards of health and police to issue citations and enforce all violations, or to file a motion for an injunction to enforce the order by a court. Below is a brief overview and summary of the new requirements under those orders.

The information contained herein is current as of the date of issuance. Where the state and federal governments are regularly enacting new or updated laws, regulations, and guidance in response to the COVID-19 crisis, we recommend that you consult with counsel regularly to ensure that you have the most up-to-date information.

Executive Order No. 53: Effective on November 6, 2020, the businesses and facilities and activities listed below must remain closed to members of the public from **9:30 PM to 5:00 AM**. Several sector-specific standards have already been issued by various state agencies in implementation of this Order, and more may be updated in the coming days. These standards should be consulted as well.

- Restaurants (take-out only after 9:30 PM; per sector specific guidelines, patrons served food before 9:30 PM must leave the restaurant by 10:00 PM at the latest)
- Indoor and outdoor recreation, events, and theatres and performance venues
- Youth and adult sports, including golf facilities and boating
- Outdoor recreational and educational activities
- Casinos and horse racing tracks
- Driving and flight schools
- Zoos, gardens, wildlife reserves, and nature centers
- Close contact personal services
- Gyms, fitness centers, and health clubs
- Indoor and outdoor pools
- Museums and historical tours

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In addition to early closing, the Order also prohibits the sale of alcohol or adult-use (recreational) cannabis after 9:30 PM. This applies both to bars and restaurants, but also to grocery stores and convenience stores. Each individual sale may be treated as a separate violation for purposes of administering fines and penalties (up to \$500 per violation). These increased penalties are intended to deter businesses from making a calculated business decision to continue serving alcohol because of a one-time fine. Additionally, the Order allows a holder of a license to sell alcohol pursuant to G.L. c. 138, § 12 to renew the license, despite remaining closed to the public in light of this and other relevant Orders, so long as certain procedural requirements are met.

Executive Order No. 54: Effective on November 6, 2020, existing gathering limitations have been revised, for both indoor and outdoor gatherings and events across the Commonwealth. Significantly, the Order requires that **all** gatherings regulated by the Order, with the exception of religious or political gatherings, must end by 9:30 PM. This would include in-person public meetings of municipal boards, commissions and committees, but not legislative bodies (which remain exempt).

Private residences: Regardless of whether located in a “high-risk” or “low-risk” communities (as designated by DPH), the following limitations apply:

- Indoor gatherings are limited to a maximum of 10 people, except where a single household includes more than 10 people; members of the same household shall not constitute a “gathering” for purposes of the Order.
- Outdoor gatherings can have no more than 25 people.

Event Venues and Public Settings:

- Indoor gatherings can have no more than 25 people.
- Outdoor gatherings are differentiated between high- and low-risk communities:
 - In low risk communities, there can be no more than 100 people, but if the event has more than 50 people, the operator or coordinator must provide notice to the local Board of Health at least **1 week** before the event (except where not feasible due to the nature of the event, like a funeral).
 - In high risk communities, there can be no more than 50 people.
- Event or performance venue is generally defined in the Order to encompass any setting open to the public (including parks), and private facilities available for rent or lease for gatherings (including private homes rented out for weddings and fundraisers). These limitations do not apply to any municipal legislative body or the judiciary, the federal government, healthcare centers, polling places, schools, special education centers, childcare programs, correctional facilities, mental health and youth service centers, shelters, and any other places that Commissioner of Public Health may exempt.
- Gatherings for religious expression are not subject to the Order’s gatherings limits, but are subject to Places of Worship sector-specific rules, including capacity limits.
- Outdoor gatherings for political expression, including protests or rallies, are also not subject to the size limitations in the Order, however, indoor gatherings for political expression are subject to the indoor capacity limitations of the Order, referenced above.

In addition to fines and penalties, the ABCC or a local licensing authority may, after notice and a hearing, suspend or revoke a liquor license if the licensee has violated this revised gathering Order.

Executive Order No. 55: The new face covering order requires that all persons over the age of 5 must wear face covering, indoor and outdoor, at all times (including while carpooling). Under the prior face covering Order, masks or face coverings were not required where individuals were able to maintain at least 6 feet of social-distance separation. That exemption has been removed. In addition to local boards of health and police, the MBTA is also authorized to enforce this order on public transportation. The fine remains at up to \$300 for a violation of the face covering order.

We have received many questions about whether municipal employees working in a city or town hall are required to wear masks or face coverings during the work day, under Order No. 55. Initially, DPH had advised that the face covering order applied to all city/town halls, even if closed to the public, because these buildings generally are considered public spaces. However, recent communications with the Governor's office have clarified that face coverings are only required in municipal buildings that are open to the public, and/or where municipal employees are dealing with members of the public (such as a service counter or window). Thus, offices or areas where there is no public access would simply be governed by the sector-specific safety standards for office spaces (<https://www.mass.gov/info-details/safety-standards-and-checklist-office-spaces>), which were put in place earlier this year as part of the Governor's reopening plan. Under the office space safety standards, face coverings for municipal personnel are only mandated when social distancing of 6 feet or more is not possible.

Order No. 55 permits facilities or businesses to deny access to a customer refuses to wear a mask or face covering for non-medical reasons.

The face covering order does not apply to:

- Persons with medical conditions (except that schools and employers can now ask their employees or students, respectively, for documentation as to a medical exemption from the face covering order).
- Where covering would impede communication for persons with hearing impairment or other disability.
- When person is alone and/or with other household members, in a motor vehicle or home.
- Where sector-specific rules provide otherwise (e.g., restaurants, dental care, swimming).

Stay-At-Home Advisory: Finally, DPH has issued a stay-at-home advisory, covering the hours of 10 PM through 5 AM. Although not an Executive Order, this advisory encourages individuals to only leave home between those hours for essential needs such as to go to work or school, seek medical care, and obtain groceries or take-out food. No gatherings are permitted past 9:30 PM, in accordance with Order No. 54. If you do leave home, social distancing and face coverings are required at all times.

Please feel free to contact your KP Law attorney with any questions and/or e-mail us at coronavirusinfo@kplaw.com. We will be in touch with you as soon as possible.

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